HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.P.NO.12176 OF 2006

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Between:
M/s. Agarwal Industries Limited,
Industrial Area, Azamabad, Hyderabad.

..... Petitioner

AND

The State of A.P. represented by its Secretary,
EFS & T Dept., A.P.
Secretariat, Hyderabad and 2 others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri Ch.Pushyam Kiran for

Sri S.Ravi

Counsel for Respondent No.1 : Government Pleader for

Transport

Counsel for Respondent Nos. 2&3 : Sri G.Ramesh Babu for SV Bhatt

Dated 20/6/2006

Per Sri G.S.Singhvi, CJ

This is a petition for quashing order dated 4.2.2006 passed by the Appellate Authority constituted under the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act').

The petitioner is engaged in the manufacture of vanaspathi, refined oils and solvent extracted oils. It is said to have established a factory in Azamabad, Hyderabad in 1940. After the enactment of Water and Air Acts, the petitioner is said to have obtained consent from the concerned authorities in accordance with the relevant provisions of the two enactments. The same appears to have been renewed from time to time. However, the application made by the petitioner for grant of consent was not entertained by Andhra Pradesh Pollution Control Board (for short 'the Board') and by an order dated
20-12-2005, the Board threatened closure of the industry. The petitioner challenged that order by filing an appeal under Sections 28 of the Water Act and Air Act, which was dismissed by the Appellate Authority.

Sri Ch. Pushyam Kiran, learned counsel for the petitioner argued that the reasons contained in the order passed by the Board are wholly extraneous to the scheme of Water Act and Air Act and, therefore, the impugned order is liable to be declared as vitiated by an error of law apparent on the face of the record. He submitted that the Board cannot compel the petitioner to shift its operations from Azamabad to Kakinada. According to the learned counsel, even though this point was specifically

raised and argued before the Appellate Authority, the latter has not considered the same in correct perspective. Shri Pushyam Kiran then argued that failure of the Appellate Authority to entertain the petitioner's request for being allowed to carry on operations in the refinery unit should also be treated as sufficient for invalidation of the impugned order.

We have thoughtfully considered the entire matter. At the outset, we may mention that the petitioner has not challenged the legality of communications dated 20.12.2005 and 26.3.2006 sent by the Board and therefore we have refrained from adjudicating on the same.

Notwithstanding the fact that the petitioner has not questioned the legality of communication dated 20.12.2005 issued by the Board, we shall have to advert to the same for deciding legality of the order under challenge. A reading of that communication shows that on an earlier occasion, the Board had vide its order dated 17-10-2005 issued under Section 31-A of the Air Act, as amended in 1987 directed the petitioner to stop production. Later on, that order was revoked on 22-10-2005 subject to the following conditions:

i) The industry may operate both Refinery and Vanaspathi sections during daytime and shall stop Vanaspathi section during night time and may operate the Refinery section in night time.

ii) The industry shall take all necessary measures to control noise pollution and noise levels shall not exceed the following
Day time (6AM to 10PM)- 75 dB(A) and Night time (10PM to 6AM)-70 dB(A).

iii) Industry shall upgrade the Air Pollution Control Equipment attached to the Boiler by replacing the existing Bag filters with high density filters by end of November, 2005 so as to meet the SPM standard of 50mg/NM3.

iv) Industry shall close the operations and shift out of Azamabad to Kakinada by 31st December, 2005 for which CFE of the Board has already been issued.

From what has been mentioned above, it is clear that the Board had adopted an extremely liberal attitude towards the petitioner. However, the

petitioner did not take steps for upgrading the air pollution equipments. This compelled the Board to pass order dated 20.12.2005, paragraphs 4 to 9 of which read as under:

> "4. Vide reference 3rd & 4th cited, you have requested the Board on 29.11.2005 & 03.12.2005, to grant 15 days time to enable to restart the Boiler and manufacturing process so as to clean the goods lying in the process and stated that you have stopped the operation of the Boiler and production on 30.11.2005.
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> 5. Vide reference 5th cited, the Board officials inspected your industry on 02.12.2005 and observed that the industry was not in operation and not upgraded the air pollution control equipment attached to the Boiler by replacing the existing bag filters with high density filters by end of November, 2005 so as to meet the SPM standards 50mg/nm3.
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> 6. Vide reference 6th cited, the Board rejected your request as you have failed to install equipments for control of SPM by 30.11.2005 and also directed to close your industry and move your industrial operations to Kakinada for which CFE of the Board has been already issued.
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> 7. Vide reference 7th cited, you have again requested the Board on 12.12.2005 to accord permission for 15 days to enable to clear the stocks lying in storage tanks and fill the same in containers.
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> 8. After careful consideration of all material facts of the case, the Board hereby permits your industry to operate during day time (6 A.M to 10 P.M) till 31.12.2005, under section 31(A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987, with the follwing conditions:
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> i) The industry shall operate to clear the existing material from pipelines/storage tanks only.
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> ii) The industry carryout the above operations only during daytime i.e., from 6AM to 10 PM.
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> iii) The industry shall take all necessary measures to control noise pollution and noise levels shall not exceed for day time (6AM to 10PM)-75 dB (A).
>
> iv) Industry shall operate the Air Pollution Control Equipment attached to the Boiler.

v) Industry shall close all the operations and shift out of Azamabad to Kakinada by 31st December 2005 for which CFE of the Board has already been issued.

9. You are hereby directed to note that, should you misuse these orders to operate your industry without complying with the above conditions, action will be initiated against your industry under section 31(A) of the Act (Prevention and Control of Pollution) Amendment Act, 1987, you will be liable for prosecution under section 37(1) of the Air (Prevention and Control of Pollution) Amendment Act, 1987l, the punishment for which includes imprisonment for a term which shall not be less than one year six months and which may be extended to six years with a fine."

The Appellate Authority independently considered the entire matter and dismissed the appeal by recording the following reasons:

"The above narration of facts makes it abundantly clear that the appellant has at no stage disputed but on the other hand has clearly admitted the fact that its industry and the Vanaspathi section in particular is causing air and noise pollution and therefore agreed to close down the industry and shift it from its present location in Azamabad, Hyderabad to Kakinada. As a matter of fact, the Appellant seems to have applied to the Board for consent for establishment of the industry at Kakinada for which the Board has already issued the consent order. It is also not in dispute that adjacent to the Appellant industry many residential complexes have come up. It cannot therefore be doubted that the residents of the locality are put to grave hardship and inconvenience due to air and noise pollution and odour emanating from the Appellant industry. It is true that in the CFO order dated 15.10.2003 the SPM limit was prescribed as 115 mg/NM^3 and the same is now sought to be reduced by the Board to 50 mg/NM^3 considering the altered circumstances as a number of residential complexes have come up in the vicinity and the great hardship and inconvenience caused to the residents. Undoubtedly, the Board has power under Section 31(A) of the Air (Prevention and Control of Pollution Act), 1981 to issue such directions depending on the exigencies of the situation. As a matter of fact, the

> Board issued the direction to meet the SPM standard of 50 mg/NM^3 for the first time in its order dated 09.05.2005 which was reiterated in the orders subsequently passed from time to time. The Appellant did not challenge any of the said orders and on the contrary voluntarily agreed to abide by the same. The Appellant cannot therefore now make any grievance against the same. Even though the Azamabad industrial estate is very old one and numebr of industries were established in the year 1940, the residential complexes and pollution is increasing day by day around the estate. Some of the industrial activities have been stopped to control the water and air pollution. The A.P. Pollution Control Board may take action against similar polluting industries by stipulating stringent standards or shifting the industries after a holistic survey being conducted in the area. The fact that several other industries are located in the area cannot be a valid ground for invalidating the impugned order which is otherwise perfectly valid and justified. After all the Board acceding to the request of the Appellant has granted time till the end of December, 2005 to run the industry as sought for. The Appellant therefore cannot have any legitimate grievance against the impugned order. We do not therefore find any valid grounds to interfere with the impugned order in this Appeal."

In our opinion, the reasons assigned by the Board for refusing to allow the petitioner to continue its operations are directly germane to the provisions of Section 31-A of the Air Act and order dated 20.12.2005 does not call for interference more so because despite the revocation of earlier order of closure, the petitioner failed to take steps to upgrade air pollution equipments attached to the boiler. This, by itself, constituted a valid ground for reiterating the order of closure. The Appellate Authority, as mentioned above, independently considered the entire matter and refused to interfere with the action taken by the Board because the petitioner failed to take steps for controlling air pollution.

Learned counsel for the petitioner made strenuous efforts to

persuade us to nullify the order impugned in the writ petition by arguing that the Appellate Authority did not consider his client's plea of discrimination, but we have not felt impressed. In our considered view, failure of the Board to take action against similarly situated polluting industries cannot justify invoking of the doctrine of equality enshrined in Article 14 of the Constitution. It is settled law that an illegal order passed or action taken by a public authority cannot be made basis for nullifying an otherwise lawful order passed or action taken by such authority.

In the result, the writ petition is dismissed.

As a sequel to the dismissal of the writ petition, WPMP No.15149 of 2006 filed for staying the execution of the order passed by the Appellate Authority is also dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY,J

20-06-2006

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